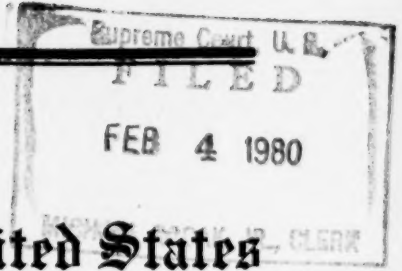


APPENDIX



IN THE  
**Supreme Court of the United States**

OCTOBER TERM 1979

---

NO. 79-492

---

ROBERT MICHAEL FUNGAROLI,

.....Appellant

V.

JUDITH DIANE FUNGAROLI,

.....Appellee

---

ON APPEAL FROM THE NORTH CAROLINA  
COURT OF APPEALS

---

FILED SEPTEMBER 11, 1979  
PROBABLE JURISDICTION NOTED JANUARY 14, 1980

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RELEVANT DOCKET ENTRIES

Complaint, filed December 21, 1977

Order of temporary custody dated December 21, 1977

Order of continuance dated January 9, 1978

Order allowing defendant (appellee) visitation rights, dated February 18, 1978

Affidavit of defendant (appellee) with attachments, filed February 24, 1978

Order to show cause, dated February 24, 1978

Answer and counterclaim, filed February 28, 1978

Defendant's (appellee's) affidavit of financial standing, filed March 1, 1978

Motion for alimony pendente lite and attached affidavit, filed March 1, 1978

Hearing on temporary alimony held March 1, 1978

Order for temporary alimony, dated March 1, 1978

Order allowing G. Edgar Parker to withdraw, dated March 6, 1978  
Hearing on show cause order held March 6, 1978  
Order for arrest dated March 7, 1978  
Appeal entries from alimony order, dated March 8, 1978  
Appeal entries from order of arrest, dated March 8, 1978  
Opinion of North Carolina Court of Appeals filed March 20, 1979  
Amended Judgment Dismissing Appeal on Motion of Defendant filed June 13, 1979, in North Carolina Supreme Court

IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION

NORTH CAROLINA     )  
                          )  
FORSYTH COUNTY     )

ROBERT MICHAEL FUNGAROLI)

Plaintiff             )

vs.                    )

JUDITH DIANE FUNGAROLI, )

Defendant            )

COMPLAINT

---

The plaintiff, complaining of the defendant, alleges and says:

I.

That the plaintiff and defendant are citizens and residents of the County of Forsyth, State of North Carolina; that the plaintiff has been a resident of Forsyth County, North Carolina for more than six months next preceding the commencement of this action.

II.

That the plaintiff and defendant were lawfully married on the 3rd day of May, 1977.

III.

That there was one child born to the marriage, to-wit: Derek Cassidy Fungaroli, born March 19, 1977. That the plaintiff is in all respects a fit and proper person to have the care, custody, and control of the minor child and that the defendant is not in anywise fit, proper or suitable to have the custody of said child. Defendant has had a mental illness which has recurred frequently in the past 4 to 5 years and the mental illness has again occurred within the past 2 months; that for the past 2 months, defendant has experienced severe personality changes and fluctuates between a love-hate personality; that during said period of

time defendant has often had no control over herself; that during this period of time defendant has had to be constantly medicated with psychiatric drugs; that plaintiff signed a petition to have defendant committed on or about December 6, 1977, for the reasons that defendant was throwing the telephone and acting violently, that defendant has threatened the lives of the plaintiff and plaintiff's relatives, that defendant was having delusions and was talking about seeing faces in the walls of her house of various relatives, and that defendant neglected the minor child in that she was not adequately feeding the child and rarely changing the child; that a hearing was held before Forsyth County District Court Judge on or about December 14, 1977, and defendant was released; that since the release, the defendant has continued to experience the above mentioned

symptoms; that on or about December 15, 1977, the defendant was found at a diner in Kernersville and plaintiff was informed by a Sheriff that she was having delusions, and that she did not know where she lived; that the defendant has again been committed and is scheduled to have another committment hearing on December 21, 1977.

WHEREFORE, plaintiff respectfully prays the Court:

(1) That this verified complaint be taken as an Affidavit in the cause;

(2) That plaintiff be awarded the care, custody and control of the minor child born of his marriage to the defendant;

(3) That an order be signed giving plaintiff immediate custody of the minor child pending a hearing in this matter;

(4) For such other and further relief as to the Court may seem just and proper.

WHITE AND CRUMPLER

ATTORNEYS FOR PLAINTIFF

By /s/ G. Edgar Parker  
G. Edgar Parker

2616 Wachovia Building

Winston-Salem, North Carolina

(919) 725-1304

(Verification omitted in printing)

IN THE GENERAL COURT OF JUSTICE

DISTRICT COURT DIVISION

(Title omitted in printing)

ORDER

THIS CAUSE coming on to be heard and being upon Motion by plaintiff for an Order allowing plaintiff to have the temporary custody of Derek Cassidy Fungaroli pending the service of process and notice upon the defendant and until a hearing is had in this matter;

And it appearing to the Court by the verified Complaint and Affidavit in this cause that the circumstances in this case render such an Order appropriate;

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the plaintiff have the temporary care, custody and control of Derek Cassidy Fungaroli until such time as the defendant is served with process and notice of hearing and until a

hearing is had in this matter; and that the defendant be restrained and enjoined (sic) from removing the said minor child from the County of Forsyth, State of North Carolina.

This the 21st day of December, 1977.

/s/ Gary B. Tash  
JUDGE PRESIDING

IN THE GENERAL COURT OF JUSTICE

DISTRICT COURT DIVISION

(Title omitted in printing)

ORDER

THIS CAUSE coming on to be heard and being heard on the 9th day of January, 1978, before the undersigned Judge Presiding;

AND IT APPEARING to the Court that defendant is presently an inpatient in the psychiatric unit at Forsyth Memorial Hospital, and for this reason, the undersigned judge is not willing to proceed with the hearing on this date and the matter should be continued.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the hearing scheduled for January 9, 1978, be and the same is hereby, continued until the 23 day of January, 1978, at 9:30 o'clock A. M., or as soon thereafter as the matter

can be heard.

This the 9th day of January, 1978.

/s/ William H. Freeman  
JUDGE PRESIDING

IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION

(Title omitted in printing)

ORDER

This matter comes before the Court upon defendants oral motion for reasonable visitation rights with her minor child, Derek Cassidy Fungaroli, born May 19, 1977. Based upon the Court's reading of the verified pleadings herein, and the oral representations of counsel for defendant, it is hereby

ORDERED that the plaintiff allow the defendant, in the presence of her mother, to visit with the minor child at the home of the plaintiff, 317 Lucinda Lane, Kernersville, North Carolina, on Sunday, February 19, 1978, from 1 until 6 p.m., and on Wednesday, February 22, 1978, from 6 until 8 p.m.

And it is further ORDERED that

plaintiff allow the defendant to visit with the said minor child for a like period of time on each and every Sunday and Wednesday thereafter until further order of this court.

Dated: February 18, 1978.

/s/ Gary B. Tash  
District Judge

IN THE GENERAL COURT OF JUSTICE

DISTRICT COURT DIVISION

(Title omitted in printing)

A F F I D A V I T

Judith Diane Fungaroli, first being  
duly sworn deposes and says:

1. I am the defendant in this  
action.
2. My husband, Robert Michael Fungaroli, has not permitted me to visit with my minor child, Derek, in the presence of my mother or otherwise at 317 Lucinda Lane, Kernersville, North Carolina on Sunday, February 19, 1978, on Wednesday, February 22, 1978 or any other time or place since February 18, 1978.

3. I am informed and believe that my husband, Robert M. Fungaroli has left the state and is presently living in Springfield, Virginia.

4. I have, today, received by certified mail a summons and petition from  
14.

the Juvenile and Domestic Relations Court of Fairfax County, Virginia, copies of which are attached to this Affidavit as Exhibit A and B.

Further the affiant sayeth not.

/s/ Judith Diane Fungaroli  
AFFIANT

(Jurat omitted in printing)

(Certificate of Service omitted in printing)

(EXHIBIT A)

COMMONWEALTH OF VIRGINIA

TO ANY SHERIFF OR POLICE OFFICER OR

\_\_\_\_\_  
I COMMAND YOU, in the name of the Commonwealth of Virginia, that you summon the below-named parties listed to appear in person before the Juvenile and Domestic Relations District Court of the City/County of Fairfax at the date, place and time specified below to re-

spond to the allegations in the attached petition.

Child's Name:

Derek Fungaroli

Child's Address:

7225 Braddock Road, Springfield, Va. 22151

Father's Name and Address:

Robert M. Fungaroli, Same as Child's

Mother's Name and Address:

Judith D. Fungaroli 14 Devonshire St.,

Winston Salem, North Carolina 27103

Time of Appearance

Month: March Day: 22nd Year: 1978

Time: 1:30 P.M.

Court's Street Address And Telephone:

4000 Chain Bridge Rd. Fairfax, Va. 22030

691-2335 Room 107

A hearing will be held to determine whether the said child should be dealt with according to the provisions of the Juvenile and Domestic Relations

District Court Law.

In this execution you shall in no wise omit any named person and make return of this summons as provided by law.

Given under my hand this 21st day of February, 1978.

/s/Marjorie Danzig  
Deputy Clerk

(EXHIBIT B)

COMMONWEALTH OF VIRGINIA

THE JUVENILE AND DOMESTIC RELATIONS COURT  
OF THE CITY/COUNTY OF FAIRFAX

Child under eighteen years of age, to-wit:

Child's Name:	Date of Birth:	Age:
---------------	----------------	------

Derek Fungaroli	05/19/77	3
-----------------	----------	---

Sex:

M

Child's Address:

7225 Braddock Rd. Springfield, Va. 22151

Father's Name and Address:

Robert M. Fungaroli Same as Child's

Mother's Name and Address:

Judith D. Fungaroli 14 Devonshire St.

Winston Salem, North Carolina 27103

The undersigned petitioner represents to the Court to the best of his/her knowledge, information and belief that the above named child is within the purview of the Juvenile and Domestic Relations District Court that Law, within this city/county, the child:

His custody is a subject of controversy between his parents, who live apart.

(16.1-241 A (3) )

That information in the following items is not known to the petitioner:

---

NOW, THEREFORE, your Petitioner prays: That proper process issue; That said child and the persons having his

custody and control be summoned to appear before this Court; and That this Court enter such orders and judgments as the Court deems fit and proper in accordance with the law and which will serve the purpose and interest of the Juvenile and Domestic Relations District Court Law.

February 21, 1978  
Date

/s/ Richard Colten  
Petitioner's Signature

Attorney Richard Colten on behalf of Robert M. Fungaroli,

Father  
Petitioner's Name

University Dr. Fairfax, Va. 22030  
Petitioner's Address

(Jurat omitted in printing)

IN THE GENERAL COURT OF JUSTICE

DISTRICT COURT DIVISION

(Title omitted in printing)

O R D E R

THIS CAUSE, coming on to be heard ex parte upon defendant's motion to show cause filed this day, and it appearing to the court from the record herein and from the affidavit of defendant, filed with her motion, that this Court should enter an Order requiring plaintiff to appear and show cause as set forth in said motion;

NOW, THEREFORE, It is ORDERED that plaintiff, Robert M. Fungaroli, appear before the Forsyth County District Court at its Civil Session on the 6th day of March, 1978 at 9:30 o'clock a.m. and show cause why he should not be held in contempt of this Court for violation of the Order entered herein on February 18,

1978. And it is further ORDERED that plaintiff bring with him to the Court on March 6, 1978, the minor child, Derek Fungaroli.

This 24th day of February, 1978, at 4:15 o'clock p.m.

/s/ William H. Freeman  
DISTRICT COURT JUDGE

(Certificate of Service omitted in printing)

IN THE GENERAL COURT OF JUSTICE

DISTRICT COURT DIVISION

(Title omitted in printing)

ANSWER AND COUNTERCLAIM

---

The defendant, answering the Complaint of the plaintiff, alleges and says:

I. The allegations contained in paragraph one of the Complaint are admitted.

II. The allegations contained in paragraph two of the Complaint are denied, the true fact being that plaintiff and defendant were lawfully married on the 3rd day of March, 1977.

III. As to the allegations contained in paragraph three of the Complaint, it is admitted: That there was one child born to the marriage, to-wit: Derek Cassidy Fungaroli, born May 19, 1977; that plaintiff signed a Petition to have

defendant committed on or before December 6, 1977, and that at that time defendant was in fact having delusions; that a hearing was held before a Forsyth County District Court Judge on or about December 14, 1977 and defendant was released; that on or about December 15, 1977, defendant was found at a diner in Kernersville; that the defendant was committed involuntarily pursuant to an Order of this Court dated December 21, 1977, to Forsyth Memorial Hospital for a period not to exceed 90 days.

Except as hereinabove admitted, the allegations contained in paragraph three of the Complaint are denied.

AND AS FURTHER ANSWER TO THE COMPLAINT HEREIN, AND BY WAY OF COUNTERCLAIM, THE DEFENDANT ALLEGES AND SAYS:

FIRST COUNT

I. That the defendant is in all

respects a fit and proper person to have the care, custody, and control of the said minor child, and that the plaintiff is not a fit, proper or suitable person to have custody of the said minor child.

#### SECOND COUNT

I. That on or about December 21, 1977, at which time defendant was appearing before the District Court in response to plaintiff's Petition for Involuntary Commitment, and at which time plaintiff knew, or should have known, that defendant was incapable of understanding the allegations of the instant Complaint, and at which time plaintiff knew, or should have known, that, given defendant's mental condition, service upon defendant of the instant Complaint would further exacerbate defendant's illness, plaintiff nevertheless attempted to serve the defendant with the Summons and Complaint

in the instant action.

II. That on or about the first week of January, 1978, defendant was granted a pass by her doctors at Forsyth Memorial Hospital for the purpose of returning home to visit plaintiff and her infant child. Upon returning home, plaintiff refused to allow defendant to visit with her infant child, and in fact forced defendant, her mother, and other relatives to leave the home, and not to return.

III. That subsequent to plaintiff's involuntary hospitalization on December 21, 1977, the plaintiff has visited with the defendant no more than three times, and at no time has the plaintiff provided the defendant with any subsistence in any form.

IV. That on or about May 19, 1977, plaintiff, at the time of the birth of

defendant's infant son, had engaged in such excessive use of marijuana as to almost cause defendant to lose her child, which child was born at the home of the parties.

V. That upon information and belief, plaintiff is the co-owner of Ridgetop Records and is, therefore, gainfully employed; defendant is presently unemployed and has no income from any source whatsoever. Plaintiff is, therefore, a supporting spouse and defendant is a dependent spouse within the meaning of N.C.G.S. §50-16.1(3), (4).

VI. Based on those facts set forth in Paragraphs I through V of the Second Count of defendant's counterclaim, defendant is entitled to alimony, alimony pendente lite, and reasonable attorney's fees from plaintiff, pursuant to the provisions of N.C.G.S. §50-16.2 (4), (5),

(7), (9), (10), N.C.G.S. §50-16.3, and N.C.G.S. 50-16.8.

NOW WHEREFORE, the defendant respectfully prays the Court as follows:

1. That plaintiff's Complaint be dismissed;

2. That defendant be awarded custody of the minor child, Derek Cassidy Fungaroli;

3. That defendant have and recover of plaintiff alimony, alimony pendente lite, and reasonable attorney's fees, in a reasonable amount or amounts to be determined by the Court;

4. That the costs of this action be taxed against the plaintiff; and

5. For such other and further relief as the interest of justice may require.

LEGAL AID SOCIETY OF NORTH-  
WEST NORTH CAROLINA  
202 West Third Street  
Winston-Salem, North Carolina  
27101  
(919) 725-9166

BY: /s/ Bertram Ervin Brown, II  
BERTRAM ERVIN BROWN, II

Attorney for defendant

(Certificate of Service omitted in print-  
ing)

IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION  
(Title omitted in Printing)  
AFFIDAVIT OF FINANCIAL STANDING  
OF PARTY SEEKING SUPPORT  
JUDITH DIANE FUNGAROLI, the defen-  
dant herein having been first duly sworn  
as to the truthfulness and completeness  
of this affidavit deposes and says that  
she has income from the following sources  
and none other;

	<u>MONTH</u>	<u>YEAR</u>
Gross Wages	<u>0</u>	<u>0</u>
(if weekly or biweekly round off to monthly)		
Federal Withholding	_____	_____
State withholding	_____	_____
Social Security	_____	_____
Retirement	_____	_____
Loans	_____	_____
Others(Specify)	_____	_____

Net Wages	<u>0</u>	<u>0</u>
Business Profit	<u>          </u>	<u>          </u>
Commission	<u>          </u>	<u>          </u>
Overtime	<u>          </u>	<u>          </u>
Interest	<u>          </u>	<u>          </u>
Dividends	<u>          </u>	<u>          </u>
Trust Fund	<u>          </u>	<u>          </u>
Social Security	<u>          </u>	<u>          </u>
Pension	<u>          </u>	<u>          </u>
Rent	<u>          </u>	<u>          </u>
Other (Itemize)	<u>          </u>	<u>          </u>
TOTAL INCOME	<u>          </u>	<u>          </u>
Other Assets (Stocks, Bonds, Savings Accounts, Real Estate, Etc.)	<u>0</u>	<u>0</u>

That my pay period  
is:

Weekly	<u>N/A</u>
Bi-Weekly	<u>          </u>
Twice Monthly	<u>          </u>

30.

Monthly	<u>          </u>
Other	<u>          </u>

If answer is yes then list specifically  
and in detail on separate sheet. That I  
have        have not        received substan-  
tially the same amount of income for the  
past twelve months.

That if I have not received substantially  
the same amount I did receive (explain  
how much and why):

That I have       , have not       , received  
substantially the same amount of income  
for the past three years.

That if I have not received substantially  
the same amount I did receive (explain  
how much and why a greater or lesser  
sum):

That my expenses while living separate  
and apart from my spouse are monthly as  
follows (if all payments are not made by  
the month, figure the average monthly  
costs for each):

31.

	<u>MONTHLY TOTAL</u>
Food at home	<u>\$ 120.00</u>
Food away from home	<u>-----</u>
Household supplies	<u>100.00</u>
Auto Payment	<u>-----</u>
Support for children not living with affiant	<u>-----</u>
Utilities: Heating	<u>30.00</u>
Water	<u>6.00</u>
Electric	<u>40.00</u>
Gas for Auto	<u>50.00</u>
Repairs for Auto	<u>-----</u>
Other Transportation Costs	<u>-----</u>
Grooming	<u>10.00</u>
Clothing	<u>50.00</u>
Laundry and Dry Cleaning	<u>25.00</u>
Recreation	<u>40.00</u>
Medical(including doc- tor's, hospital, dentists, drugs, not paid by in- surance)	<u>60.00</u>
Reading materials	<u>-----</u>

32.

Tobacco & Alcohol	<u>-----</u>
Club dues & expenses	<u>-----</u>
Rent	<u>-----</u>
Household & yard main- tenance	<u>200.00</u>
Cable T.V.	<u>-----</u>
Church Pledge	<u>-----</u>
Educational	<u>-----</u>
Gifts	<u>-----</u>
Other (Itemize)	<u>-----</u>
TOTAL BALANCE DUE	<u>-----</u>
House Payments:	
1st Mtg.	<u>-----</u>
2nd Mtg.	<u>-----</u>
3rd Mtg.	<u>-----</u>
Insurance:	
Car	<u>-----</u>
Life	<u>-----</u>
Hospital	<u>-----</u>
Other	<u>-----</u>

Debt payments (if the following are not  
represented elsewhere in this affidavit

33.

specify)

Master charge \_\_\_\_\_

Bank reserve \_\_\_\_\_

Credit reserve \_\_\_\_\_

Department Stores \_\_\_\_\_

Other (itemize) \_\_\_\_\_

MONTHLY TOTAL \_\_\_\_\_

That I am employed at (unemployed)  
and have been so employed since \_\_\_\_\_.

That I was employed at \_\_\_\_\_  
prior to where I am now employed.

That I have \_\_\_\_\_, do not have x,  
other employment. If have it checked  
yes, my other employment is at \_\_\_\_\_.

That this petitioner needs for her  
own support from the respondent the sum  
of \$731.00 monthly; \$182.75 weekly.

/s/Judith Diane Fungaroli

AFFIANT

(Jurat omitted in printing)

IN THE GENERAL COURT OF JUSTICE

DISTRICT COURT DIVISION

(Title omitted in printing)

MOTION FOR ALIMONY PENDENTE

LITE AND ATTORNEYS FEES  
\_\_\_\_\_

NOW COMES defendant in the above-  
captioned action, through counsel, pur-  
suant to the provisions of N.C.G.S. §§50-  
16.3, 50-16.4 and 50-16.8(f), and moves  
the Court for an Order requiring plain-  
tiff to pay her alimony pendente lite in  
the amount of \$100.00 per week, and for  
attorneys fees in the amount of \$50.00  
per week. This motion is based upon the  
defendant's verified Answer and Counter-  
claim, and her Affidavit which is at-  
tached hereto.

Respectfully submitted this the 1  
day of March, 1978.

LEGAL AID SOCIETY OF NORTH-  
WEST NORTH CAROLINA, INC.  
202 West Third Street  
Winston-Salem, North Carolina  
27101  
(919) 725-9166

BY: /s/Bertram Ervin Brown, II  
BERTRAM ERVIN BROWN, II  
Attorney for defendant

AFFIDAVIT

NOW COMES the affiant, Judith Diane Fungaroli, and being duly sworn, deposes and says:

1. My name is Judith Diane Fungaroli, and I am the defendant in an action captioned Fungaroli vs. Fungaroli, File No. 77 CVD 4340.

2. On or about the 16th day of February, 1978, I was discharged from St. Albans Hospital, Radford, Virginia. Upon returning to my house at 317 Lucinda Lane, Kernersville, North Carolina, I discovered that my husband, Robert Michael Fungaroli, had changed the locks on the doors of the house and that I was unable to gain access to the same.

3. I am presently unemployed and have no income from any source whatsoever. I am presently living in the home of a relative in Winston-Salem, North Carolina.

4. On February 18, 1978, the Court in the above-mentioned action signed an Order requiring my husband to allow me to visit with my minor child, Derek Cassidy Fungaroli. As shown by the Order of this Court dated February 24, 1978, my husband, the plaintiff, has failed to comply in all respects with the visitation Order dated February 18, 1978.

5. On or about February 24, 1978, I received by certified mail a Summons and Petition filed by my husband in the Juvenile and Domestic Relations Court of Fairfax County, Virginia, the purpose of said Petition being to obtain permanent custody of my minor child.

Further, the affiant sayeth naught.

/s/Judith Diane Fungaroli  
JUDITH DIANE FUNGAROLI

(Jurat omitted in printing)

IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION

ROBERT MICHAEL FUNGAROLI)	
Plaintiff )	
vs. )	ORDER
JUDITH DIANE FUNGAROLI, )	
Defendant )	

---

THIS MATTER comes before the Court on the Motion of defendant for alimony pendente lite and for attorneys fees. It appearing to the Court that the plaintiff has left the State of North Carolina, no notice was given of defendant's Motion, and, in the opinion of the Court, none is required pursuant to the provisions of N.C.G.S. §50-16.8(e). The Court having considered the verified Complaint, the verified Answer and Counterclaim, and the Affidavit of defendant, and being otherwise fully advised in the premises, does hereby make the following

### FINDINGS OF FACT

1. That the plaintiff, Robert Michael Fungaroli, has left the State of North Carolina and is living presently in Springfield, Virginia.

2. That the plaintiff, Robert Michael Fungaroli, left the State of North Carolina, and carried with him the minor child, Derek Cassidy Fungaroli, after he had filed the instant action, and after the defendant had answered and counter-claimed for alimony, alimony pendente lite, and custody of the minor child, and after this Court had entered an Order herein dated February 18, 1978, requiring the plaintiff to allow the defendant to visit with her minor child, Derek Cassidy Fungaroli.

3. That the defendant is presently unemployed and has been unemployed each and every day subsequent to her hospitali-

zation which commenced on December 21, 1977, and ended on February 16, 1978; that the defendant has no income from any source whatsoever at the present time, and has no residence of her own other than that being presently provided on a temporary basis by her relatives.

4. That the plaintiff is the co-owner of a partnership, Ridgetop Records, located in the City of Winston-Salem, North Carolina, and is therefore gainfully employed.

5. That at no time subsequent to December 21, 1977, has the plaintiff provided the defendant with any subsistence in any form.

6. That commencing on or about the first week of January, 1978, and continuing up to and including the present date, the plaintiff has wilfully obstructed defendant in her attempts to return to

her home at 317 Lucinda Lane, Kernersville, North Carolina.

Based on the foregoing Findings of Fact, the Court hereby makes the following

CONCLUSIONS OF LAW

1. That the plaintiff is a supporting spouse and the defendant a dependant spouse within the meaning of N.C.G.S. § 50-16.1(3), (4).

2. That the plaintiff, Robert Michael Fungaroli, has abandoned the defendant, Judith Diane Fungaroli, and has maliciously turned the defendant out of doors.

3. That the plaintiff, Robert Michael Fungaroli, has offered such indignities to the person of the plaintiff, Judith Diane Fungaroli, as to render her condition intolerable and her life burdensome.

4. That the plaintiff, Robert Michael Fungaroli, has wilfully failed to provide the defendant, Judith Diane Fungaroli, with necessary subsistence according to his means and condition so as to render the condition of the defendant, Judith Diane Fungaroli, intolerable and the life of the defendant burdensome.

Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby ORDERED, ADJUDGED and DECREED:

1. That commencing on Monday, March 6, 1978, and on each and every Monday thereafter, until further orders of this Court, the plaintiff, Robert Michael Fungaroli, pay to the Forsyth County Clerk of Court, for the support of Judith Diane Fungaroli, alimony pendente lite in the amount of \$100.00 per week;

DATED this the 1st day of March, 1978.

/s/Gary B. Tash  
DISTRICT COURT JUDGE  
43.

IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION

(Title omitted in printing)

O R D E R

THIS CAUSE coming on to be heard and being heard before the undersigned Judge Presiding over the Forsyth County Civil District Court upon Motion of G. Edgar Parker of the firm of White and Crumpler to allow the said G. Edgar Parker to withdraw as counsel for the plaintiff;

And it appearing to the Court that the plaintiff by a letter of March 3, 1978 discharged G. Edgar Parker as his attorney of record and stated that he no longer desired that G. Edgar Parker represent him in this case.

And it appearing to the Court that G. Edgar Parker should be allowed to withdraw as attorney for plaintiff and that

this Motion should be allowed.

NOW, THEREFORE, it is, ORDERED, ADJUDGED AND DECREED that G. Edgar Parker of the firm of White and Crumpler be and he is hereby allowed to withdraw as attorney of record for the plaintiff in this case.

This the 6th day of March, 1978.

/s/William H. Freeman  
Judge Presiding

IN THE GENERAL COURT OF JUSTICE

DISTRICT COURT DIVISION

(Title omitted in printing)

ORDER FOR ARREST

This matter coming before the Court pursuant to the Order of the Court entered February 24, 1978, requiring the plaintiff, Robert Michael Fungaroli, to appear and show cause, if any there be, why he should not be held in contempt of this Court for violation of the Order entered herein on February 18, 1978, and further ordering the plaintiff to bring with him the minor child, Derek Cassidy Fungaroli, and the plaintiff failing to appear this date, the Court hereby makes the following

FINDINGS OF FACT:

1. That on February 18, 1978, this Court entered an Order requiring the plaintiff to allow the defendant to visit with her minor child on Sunday, February 19,

1978, and on Wednesday, February 22, 1978, and on each and every Sunday and Wednesday thereafter until further order of this Court.

2. That at no time subsequent to February 18, 1978, has the plaintiff complied in any respects with the Order of this Court of the same date.

3. That the plaintiff has fled to the state of Virginia for the sole purpose of obstructing the Order of this Court dated February 18, 1978.

Based on the forgoing findings of fact, the court hereby concludes as a matter of law that the plaintiff, Robert Michael Fungaroli, is in civil and criminal contempt as a result of his failure to comply with the Order of this Court dated February 18, 1978, and Order of this Court dated February 24, 1978.

NOW, THEREFORE, it is ORDERED, AD-

JUDGED and DECREED as follows:

1. That the sheriff of Forsyth County, or the sheriff of any other county of this state, arrest the said Robert Michael Fungaroli, and take him into custody until such time as he complies with the Order of the Court dated February 18, 1978.

2. It is FURTHER ORDERED that, as a result of the plaintiff's criminal contempt in wilfully obstructing the Orders of this Court, he is fined the sum of Five Hundred Dollars (\$500.00).

3. and be it FURTHER ORDERED that the plaintiff may purge himself of both civil and criminal contempt by personally appearing before this Court on or before March 20, 1978.

Entered this the 7th day of March, 1978.

/s/William H. Freeman  
DISTRICT COURT JUDGE

IN THE GENERAL COURT OF JUSTICE

DISTRICT COURT DIVISION

(Title omitted in printing)

APPEAL ENTRIES

Plaintiff gave due notice of appeal to the Court of Appeals.

Appeal bond in the sum of \$200.00 is adjudged to be sufficient.

Plaintiff is allowed 45 days in which to serve proposed record on appeal, and defendant is allowed 30 days thereafter within which to serve objections or a proposed alternative record on appeal.

This the 8th day of March, 1978.

/s/Gary B. Tash  
Judge Presiding

IN THE GENERAL COURT OF JUSTICE

DISTRICT COURT DIVISION

(Title omitted in printing)

APPEAL ENTRIES

Plaintiff gave due notice of appeal to the Court of Appeals.

Plaintiff is allowed 45 days in which to serve proposed record on appeal, and defendant is allowed 30 days thereafter within which to serve objections or a proposed alternative record on appeal.

This the 8th day of March, 1978.

/s/William H. Freeman  
Judge Presiding

NORTH CAROLINA COURT OF APPEALS

Opinion of the North Carolina Court of Appeals, dated March 20, 1979, was printed as Appendix B to appellant's Jurisdictional Statement and can be found on page 4a of the Jurisdictional Statement.

SUPREME COURT OF NORTH CAROLINA

Amended Judgment Dismissing Appeal on Motion of Defendant, dated June 13, 1979, from the Supreme Court of North Carolina was printed as Appendix C to appellant's Jurisdictional Statement and can be found on page 8a of the Jurisdictional Statement.

COUNSEL OF RECORD

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FILING AND MAILING CERTIFICATE OF PRINTER

I hereby certify that on this 4th day of February, 1980 I filed with the Clerk's Office of this Court the required copies of this document and further certify that I mailed this same date from Richmond, Va. the required copies to opposing counsel. The necessary filing and mailing was performed in accordance with the instructions given me by counsel in this case.

*Catherine Johnson*  
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